

**REMARKS**

Claims 1-5, 7-20 and 22-25 are pending in this application. By this Amendment, claim 1 is amended. The amendments introduce no new matter. Reconsideration of the application based on the above amendments and the following remarks is respectfully requested.

Applicants appreciate the allowance of claims 16-20 and 22-25. The remaining claims are also allowable, as discussed below.

Entry of the amendments is proper under 37 CFR §1.116 since the amendments: (a) place the application in condition for allowance for the reasons discussed below; (b) do not raise any new issue requiring further search and/or consideration as the amendments amplify issues previously discussed throughout prosecution; and (c) place the application in better form for appeal, should an appeal be necessary. The amendments are necessary and were not earlier presented because they are made in response to arguments raised in the final rejection. Entry of the amendments is thus respectfully requested.

The Office Action rejects claims 1-5 and 7-15 under 35 U.S.C. §101 as lacking a useful, tangible and concrete result. This rejection is respectfully traversed.

Without conceding the appropriateness of the rejection, or the Office Action's interpretation of the claims, claim 1 is voluntarily amended to recite, among other features, displaying the calculated performance indicator; and monitoring the performance of the at least one machine operator using the at least one calculated performance indicator. Thus, claim 1 is allowable at least for the inclusion of similar features to allowed claim 16.

With reference to, for example, page 24, lines 3-9 of the specification, the present subject matter addresses difficulties of accurately measuring machine parameters and producing fair comparisons therebetween. The present subject matter can be used to improve operator's awareness of how well they are performing and provide incentive to improve

performance. The present subject matter also provides management with an indication of those operators who are performing well and those who are not performing up to a particular benchmark.

The present claims are clearly useful because the calculation of at least one performance indicator for the machine operator from at least one performance indicator distribution provides a fair comparison between different machines and different operators and between different variables. This enables managers, such as, for example, mine owners and the like to fairly monitor the performance of the machine operators to ensure that, for example, maximum productivity is being achieved or where improvements can be made because the performance of the machine operators is not up to a particular standard.


The final results achieved by the present subject matter are clearly tangible, concrete, and useful. For example, claim 1, and the claims dependent therefrom, are clearly directed to a practical technological application that achieves a final result that is certainly useful, tangible and concrete. The output of the subject matter of claim 1, for example, displaying and monitoring, are conveyed in a useful, concrete and tangible manner. Further, claim 2 specifies that the method includes providing feedback to the machine operator by displaying the at least one performance indicator in substantially real-time to the operator. Hence, the claims are not merely directed to an abstract calculation or the like that is performed in a "black box" which is hidden or retained for some other purpose, such as another calculation, without providing an external benefit. Calculation and display of a performance indicator, as well as monitoring, as recited in claim 1, produce at least the tangible, useful and concrete result of indicating the level of performance of a machine operator.

Accordingly, reconsideration and withdrawal of the rejection of claims 1-5 and 7-15 under 35 U.S.C. §101 are respectfully requested.

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of claims 1-5 and 7-15, in addition to the previous allowance of claims 16-20 and 22-25, are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



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